

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**JAMES KOEDAM
Facility #56658**

Lyon County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2014-AFO-08

TO: James Koedam
2377 US Highway 75
Doon, Iowa 51235

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and James Koedam for the purpose of resolving violations resulting from a manure discharge from Mr. Koedam's open feedlot that resulted in water quality violations and a fish kill. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Cindy Martens, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand Gateway North, Suite E17
Spencer, Iowa 51301
Phone: 712/262-4177

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459A and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative

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penalties. Iowa Code section 481A.151 authorizes the assessment and recovery of damages to natural resources.

III. STATEMENT OF FACTS

1. James Koedam owns and operates an open cattle lot located at 2377 US Highway 75, Doon, Iowa (SE ¼ of Section 17, Garfield Township, Lyon County). The facility has a capacity of 450 head of cattle, with a head count of 322 at the time of DNR Field Office 3's investigation in September 2013.

2. On September 2, 2013 Cindy Martens, DNR Field Office 3 environmental specialist senior, received a telephone call from DNR Conservation Officer Greg Harson who reported a fish kill on the Little Rock River east of Doon, Iowa. On August 31, 2013, the area received two inches of rain in a short amount of time.

3. Ms. Martens began the investigation during the afternoon of September 2, 2013. Ms. Martens arrived at the Highway 75 Bridge between sections 28 and 29, Garfield Township, Lyon County, known as Boersma Tract. She observed dead fish at this location. Ms. Martens collected laboratory samples from this location. The laboratory sample results indicated the following: E. coli – 24,000 [MPN]/100 mL; Ammonia Nitrogen – 0.21 mg/L; Chloride – 22 mg/L; BOD – 5 mg/L; and Total Suspended Solids – 60 mg/L. The elevated levels of E. Coli are indicative of manure. The water was dark and murky. Ms. Martens proceeded upstream to the next crossing at Harrison Avenue to the east and north between sections 21 and 22, Garfield Township. Ms. Martens did not see any dead fish at this location and the field test did not indicate the presence of ammonia. The laboratory sample results indicated the following: E.coli – 140 [MPN]/100 mL; Ammonia Nitrogen – 0.35 mg/L; Chloride – 21 mg/L; BOD - <2 mg/L; and Total Suspended Solids – 15 mg/L. The sample results indicated normal results of a clean river. From the sampling at the two locations it was apparent to Ms. Martens that the pollutant was entering the river somewhere between the two sample points. After reviewing the stream and plat maps it was evident that the only areas feeding the impacted portion of the river originated from the north and northwest.

4. Ms. Martens proceeded north to Mr. Koedam's facility. Ms. Martens observed runoff from the facility's lots in a southeast flow pattern. The feedlot runoff flowed through the solid settling structures from each of the three lots at Mr. Koedam's facility outletting to a grassed area to the east of the feedlot pens. The grassed area quickly channelized to become an intermittent water source. From this area, the feedlot runoff flowed through a culvert under Highway 75 into a creek through a field which flowed south/southeast and entered the Little Rock River near Boersma Tract. Ms. Martens collected laboratory samples from the feedlot runoff in the channelized intermittent water source. The laboratory sample results indicated the following: E.coli - >2,400,000 [MPN]/100 mL; Ammonia Nitrogen – 540 mg/L;

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Chloride – 580 mg/L; BOD – 5,500 mg/L; and Total Suspended Solids – 5,000 mg/L. The sample had a strong manure odor and was dark in color.

5. Following the investigation at Mr. Koedam's facility, Ms. Martens proceeded to Marvin Van Maanen's open feedlot facility, located northeast of Mr. Koedam's facility. During Ms. Martens' visit, she observed feedlot runoff from Mr. Van Maanen's facility flowing into Little Rock River at Boersma Tract.

6. Mike Hawkins, with the DNR Fisheries Bureau, conducted the fish kill investigation. The source of the fish kill originated from feedlot runoff from Mr. Koedam's and Mr. Van Maanen's facilities. The fish kill extended approximately 3,058 yards in the Little Rock River; the Fisheries Bureau counted all of the dead fish in the kill area. It was determined that 522 fish were killed with a value of \$2,349.35. The Fisheries investigative costs equaled \$1,201.70. The total restitution and investigative costs equaled \$3,551.05.

7. On October 9, 2013, DNR issued a Notice of Violation letter to Mr. Koedam for the violations discovered in September 2013. The letter required that Mr. Koedam submit a Plan of Action to DNR Field Office 3 detailing how the feedlot runoff would be controlled at the facility. On November 13, 2013, the Winter Lot Management Plan was submitted by the Iowa State Extension Office on behalf of Mr. Koedam. This plan included the use of a winter management plan, with the final corrective action plan being submitted in March 2014 and the construction and implementation of the plan completed by June 2014. On December 16, 2013, the Iowa State Extension Office submitted the design and management plan for Mr. Koedam's facility. Mr. Koedam agreed to the following key components in the plan: 1) install drainage tile from the driveway to Highway 75; 2) install a pumping system to manage the small feedlot runoff; and 3) operate and manage the system to optimize performance and minimize risk. All components of the plan shall be in place by July 1, 2014.

8. DNR Field Office 3 previously visited Mr. Koedam's facility. In May 2012, DNR Field Office 3 noted there was a gully that carried runoff to a waterway and creek. At the time of the visit, nothing was flowing in the gully. DNR Field Office 3 personnel informed Mr. Koedam that additional controls were needed because it appeared that runoff from the facility reached the road ditch.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459A.104 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

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2. Iowa Code section 455B.186 prohibits the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During DNR Field Office 3's investigation it was determined that open feedlot manure from Mr. Koedam's facility was discharged into the Little Rock River. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.101 states that the minimum level of manure control for any open feedlot shall be the removal of settleable solids from the manure prior to a discharge to a water of the state. During DNR Field Office 3's investigation manure solids were observed in the river. The above facts indicate a violation of this provision.

4. 567 IAC 65.101(9) and 567 IAC chapter 131 require that a person storing, handling, transporting, or land-applying manure, process wastewater, open feedlot effluent, settled open feedlot effluent or settleable solids from an open feedlot operation who becomes aware of a release shall notify the DNR of the occurrence of the release as soon as possible but no later than six hours after the onset or discovery of the release. Manure solids and liquids from Mr. Koedam's facility were discharged into the Little Rock River and no notification was received by the DNR. The above mentioned facts indicate a violation of this provision.

5. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The laboratory results indicated elevated pollutants and a fish kill was confirmed. Additionally, DNR Field Office 3 personnel observed discolored water as well as a manure odor to the water. The above mentioned facts indicate violations of the general water quality criteria.

6. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The Natural Resource Commission has adopted 571 IAC chapter 113. 571 IAC chapter 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The manure discharge from Mr. Koedam's facility contributed to a fish kill in the Little Rock River.

V. ORDER

THEREFORE, the DNR orders and James Koedam agrees to do the following:

1. Mr. Koedam shall immediately implement the Winter Lot Management Plan submitted on November 13, 2013;

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2. Mr. Koedam shall implement the design and management plan submitted on December 16, 2013 by July 1, 2014. Mr. Koedam shall notify DNR Field Office 3 within 10 days of the plan being fully implemented;
3. Mr. Koedam shall pay half of fish restitution in the amount of \$1,175.00 and investigative costs in the amount of \$600.85 within 30 days of the date the Director signs this administrative consent order; and
4. Mr. Koedam shall pay an administrative penalty in the amount of \$5,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$5,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Mr. Koedam gained an economic benefit by failing to properly contain the manure from his facility. Mr. Koedam avoided the costs associated with not properly maintaining the manure at his facility. Additionally, Mr. Koedam has saved money by delaying the costs of not installing proper manure controls. Based on the above facts, the economic benefit Mr. Koedam received was at least \$1,500.00 and that amount is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of

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MAR 10 2014

Director's Office

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violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. DNR Field Office 3 documented a manure discharge that led to documented water quality violations and a fish kill. These violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Therefore, \$2,000.00 is assessed for this factor.

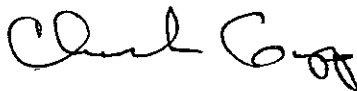
Culpability – James Koedam has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Mr. Koedam was informed of the need for more controls in May 2012 prior to the current release. Therefore, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of James Koedam. For that reason James Koedam waives the right to appeal this administrative consent order or any part thereof.

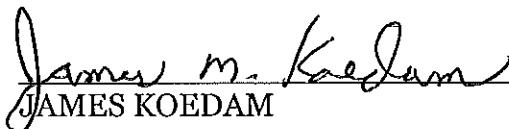
VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 17th day of
March, 2014.


JAMES KOEDAM

Dated this 7 day of
March, 2014.

Facility #56658; Kelli Book, DNR Field Office 3, EPA, VIII.D.1.B and VIII.D.3.a

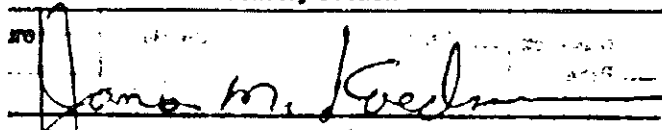


Date: April 1, 2014

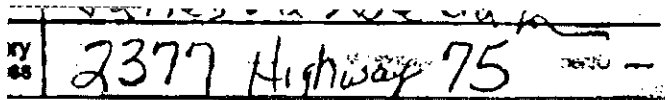
Colleen Zeliadt:

The following is in response to your April 1, 2014 request for delivery information on your Certified Mail™ item number 9171999991703239608268. The delivery record shows that this item was delivered on March 28, 2014 at 10:32 am in DOON, IA 51235. The scanned image of the recipient information is provided below.

Signature of Recipient :

Delivery Record
Signature of Recipient: 
Printed Name: James M. Koedam

Address of Recipient :

Address of Recipient: 
2377 Highway 75

Thank you for selecting the Postal Service for your mailing needs.

If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,
United States Postal Service